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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/466,971	12/20/1999	MICHEL CALLAUD	38730.830029	1797
23117	7590	04/06/2005		
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			EXAMINER LEWIS, AARON J	
			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/466,971

Applicant(s)

CALLUAUD ET AL.

Examiner

AARON J. LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/14/02 (AMENDMENT).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-31 and 33-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-31 and 33-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5,7-31,33-78 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,029,660. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between application claim 1 and patent claim 1 lies in the fact that patent claim 1 includes more elements and is thus more specific (e.g. a first amplifier, a differentiating filter, a linear drive means, a second amplifier, a first control system). Thus the invention of patent claim 1 is in effect a "species" of the "generic" invention of application claim 1. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since application claim 1 is anticipated by patent claim 1, it is not patentably distinct from patent claim 1.

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The difference between application claim 27 and patent claim 13 lies in the fact that patent claim 13 includes more elements and thus more specific (e.g. amplifying the first input signal, differentiating the first input signal, amplifying the fourth input signal, inputting the second, third, fourth, fifth signals and a predetermined sixth input signal). Thus the invention of patent claim 13 is in effect a "species" of the "generic" invention of application claim 27. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since application claim 27 is anticipated by patent claim 13, it is not patentably distinct from patent claim 13.

The difference between application claim 50 and patent claim 1 lies in the fact that patent claim 1 includes more elements and is thus more specific (e.g. a first amplifier, a differentiating filter, a linear drive means, a second amplifier, a first control system). Thus the invention of patent claim 1 is in effect a "species" of the "generic" invention of application claim 50. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since application claim 50 is anticipated by patent claim 1, it is not patentably distinct from patent claim 1.

The difference between application claim 74 and patent claim 1 lies in the fact that patent claim 1 includes more elements and is thus more specific (e.g. a first amplifier, a differentiating filter, a linear drive means, a second amplifier, a first control system). Thus the invention of patent claim 1 is in effect a "species" of the "generic" invention of application claim 74. It has been held that the generic invention is "anticipated" by the

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"species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since application claim 74 is anticipated by patent claim 1, it is not patentably distinct from patent claim 1.

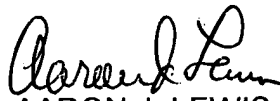
Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant substance delivery devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


AARON J. LEWIS
Primary Examiner
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Aaron J. Lewis

April 04, 2005